HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V. SEETHAPATHY

WRIT APPEAL NO. 1076 OF 2005

Between:
The Depot Manger,APSRTC,
Parvathipuram, & others

... Appellants

And

D. Vykuntarao & another

... Respondents

:: JUDGMENT::

Counsel for the Appellant : Shri V. Padmanabha Rao

Counsel for Respondent No.1 : Shri B. Gajender Reddy

Counsel for Respondent No.2 : Government Pleader for Labour

Dated: 16.06.2006

Per G.S. SINGHVI, CJ

This appeal by the Depot Manager, Andhra Pradesh State Road Transport Corporation (for short 'the Corporation), Parvathipuram, Vizainagaram and three others is directed against order dated 31.12.2004 passed by the learned Single Judge in Writ Petition No.5959 of 1997, whereby he set aside award dated 25.09.1995 passed by the Chairman and Presiding Officer of Industrial Tribunal-cum-Labour Court, Visakhapatnam (hereinafter described as 'the Tribunal') in I.D.No.135 of 1993 as also the punishment imposed by the disciplinary authority on respondent No.1-D. Vykunta Rao (hereinafter described as 'the workman') and directed his reinstatement with continuity service and back wages along with other benefits.

The Facts:

The workman joined service of the Corporation as driver on 13.03.1981. While he was on duty on 30.11.1991, vehicle No.AEZ 1112 driven by him was involved in an accident at Chinabogili, which resulted in the death of a lady pedestrian. On receipt of the report of accident, Depot Manager, Parvathipuram (for short 'the disciplinary authority') placed the workman under suspension and ordered departmental enquiry on the charge that by driving the vehicle in a rash and negligent manner, he had caused death of a lady pedestrian. The enquiry officer submitted report with the finding that the charge levelled against the workman has been proved. The disciplinary authority accepted the enquiry report and passed order dated 10.04.1992, whereby he imposed the penalty of removal from the service on the workman. Appeal and review preferred by the workman against the order of punishment were dismissed by the Divisional Manager, Vizainagaram and Regional Manager, Vizainagaram respectively. The workman then filed an application under Section 2A(2) of the Industrial Disputes Act, 1947 (for short

'the Act'), as amended by Andhra Pradesh amendment Act No. 32 of 1987). He pleaded that the finding recorded by the enquiry officer was erroneous, inasmuch as the officer concerned had failed to appreciate the evidence produced during the enquiry and that the disciplinary authority committed a grave error by ordering his removal from service. He further pleaded that the accident was not caused due to rash and negligent driving of the vehicle and, therefore, he could not have been held guilty of committing misconduct under Regulation 28(ix)(b) of the Andhra Pradesh State Road Transport Corporation Employees Conduct Regulations, 1993 and punished for the same.

In the counter affidavit filed on behalf of the disciplinary authority, it was averred that the workman was punished after holding regular enquiry. He was given opportunity to defend himself. The enquiry officer considered the evidence produced by the parties and concluded that the accident had occurred due to rash and negligent driving of the vehicle by the workman. The disciplinary authority accepted the finding recorded by the enquiry officer and imposed the penalty of removal because the workman had committed a similar misconduct on an earlier occasion.

On the pleadings of the parties, the Tribunal framed the following issues:

(1) Whether the punishment of removal from service imposed on the petitioner is justified?

(2) To what relief is the petitioner entitled?

The Chairman-cum-Presiding Officer of the Tribunal noted that the counsel appearing for the workman did not challenge the validity of domestic enquiry and confined his argument in the context of Section 11-A of the Act. He then adverted to the argument of the

counsel for the workman that the order of punishment should be set aside because Judicial Magistrate First Class, Bobbili had acquitted him in Criminal Case No.296 of 1991 registered under Section 304-A I.P.C. and observed that the standard of proof required for proving criminal liability of the accused is different than the one required for proving a charge in the departmental enquiry. He further observed that the judgment of the criminal court is not binding on the employer, though it can be considered at the time of evaluation of evidence produced before the enquiry officer. The Chairman and Presiding Officer then dealt with the evidence produced during the enquiry and held that the finding recorded by the enquiry officer, which was accepted by the disciplinary authority, does not suffer from any legal infirmity. This is evinced from the extracts (this portion has been taken from copy of award filed by the appellants) of the award of the Tribunal, which is reproduced below:

> "In the present case, the conduct of the workman stating in his explanation to the charge memo under Ex.M7 that no part of the bus even dashed the woman and that the deceased woman fell down because of her old age and fell down on the road and she might have died of the shock due to falling on the road, is reprehensible. In his statement before the enquiry officer, he makes a contradictory statement that the deceased lady fell on the right side front portion and her left shoulder was hit with the front right side portion of the bus and then she fell on the ground. Thus, the statement of the delinquent himself before the enquiry officer shows that the bus hit the deceased lady. The accident occurred at Chinabogili Junction which is cross roads shortly after the bus started from a bus stage and according to the version of the delinquents himself the deceased lady and another lady suddenly crossed the road from right side to the left side in order to board the bus. And he noticed them at the distance

of 3 or 4 feet and suddenly applied brakes by which time the lady is already hit by the front right side portion of the bus and fell down. The delinquent himself states in his statement that he stopped the bus land got down and noted bleeding injury on the right side face and right side hand of the deceased. The passengers who were examined by the enquiry officer also stated that the two ladies suddenly crossed the road from right side direction to left side direction and they came to the left side of the road in order to board the bus when the accident occurred. Thus, both the delinquent driver and the passengers observed the two ladies crossing the road in order to board the bus. In the criminal Court judgment also, it is stated that the witness deposed that the two ladies came crying for stopping the bus. Thus, it is evident that the two ladies tried to stop the bus and board it at cross roads where there was no bus stop. Thus, they are not simply crossing the road but they were crossing the road in order to board the bus at a place where there was no stage by asking the driver to stop the bus and this fact was perceived by the delinquent driver and even though it was not the stage for stopping the bus, the driver should have stopped it as the ladies expected the driver to stop the bus as they were asking him to stop it. From these facts, it is evident that the driver did not want to stop the bus as it was not the stage inspite of the cries of the Indian to stop it, but proceeded further which resulted in the accident and this fact is stated by the delinquent himself before the enquiry officer. The learned Magistrate has given considerable importance under Ex.W1 to the fact that there were no skid marks on the road. But obviously the bus was at a slow speed at the cross roads as it started at the bus stage only shortly before. And therefore there could not be any skid marks and the bus was stopped applying the brakes. Further, it is held under Ex.W1 judgment that as the ladies crossed the road suddenly it was not possible for the driver to stop the

bus at a short distance. But the driver in his statement before the enquiry officer admits that he noticed the ladies at a distance of 3 or 4 feet and he sounded the horn and slowed down the bus. According to him, the lady pedestrian thought that this is passenger service to board the bus but on there is no stage at that place he has not stopped the bus and driven the bus slowly. Thus, it is evident from his statement that he did not try to stop the bus immediately by applying the brakes but he merely slowed down and was running the bus thinking that there is no stage at that place and he need not stop the bus. It is observed by the enquiry officer in his enquiry report the distance between the bus and the deceased is 4 feet as per the rough sketch, and it shows that the driver stopped the bus only after hitting the deceased. A perusal of the enquiry report shows that the enquiry officer has carefully land meticulously considered the entire evidence on record before him including the statement of independent eye witnesses by name Sri V. Sanyasi Raju and came to the conclusion that the driver acted in a rash and negligent manner in not stopping the bus immediately though he observed the deceased and another lady crossing the road suddenly in order to board the bus and making the driver to stop the bus for boarding it. Though the delinquent was not under an obligation to stoop the bus where there was no bus stage, yet on humanitarian considerations and having regard to the fact that the two ladies were proceeding towards the bus hoping the bus would be stopped at the request, the driver should have foreseen the risk involved if he did not stop the bus. Thus, the enquiry officer rightly came to the conclusion that the driver caused the accident by his rash and negligent driving and held the charge proved against the delinquent."

On the issue of quantum of punishment, the Chairman and Presiding Officer noted that in the opinion of disciplinary authority,

appellate authority and reviewing authority, the act of causing fatal accident constituted a serious misconduct. He then noted that on an earlier occasion, the workman had caused major accident for which a penalty of stoppage of annual increment for a period of one year had been imposed on him and held that the penalty imposed by the employer was proper and justified. The Presiding Officer concluded that the workman was not a fit person to be continued as driver in the services of the Corporation.

The workman challenged the award of the Tribunal in Writ Petition No.5959 of 1997. He relied on the judgment of acquittal passed by Judicial Magistrate First Class, Bobbili and the written statement filed on behalf of the employer in O.P.No.62 of 1992 filed by the legal representatives of the deceased before the Motor Accidents Claims Tribunal-cum-District Judge, Visakhapatnam and pleaded that in the face of the stand taken by the employer that the accident had not been caused due to rash and negligent driving, the order of punishment is liable to be annulled.

In the counter affidavit filed on behalf of the appellants, it was pleaded that the award passed by the Tribunal was based on a correct appreciation of evidence and there was no valid ground to annul the order of punishment simply because the workman was acquitted in criminal case.

The learned Single Judge briefly adverted to the facts leading to the passing of order of removal, the rejection of appeal and revision filed by the workman and the award passed by the Tribunal. He then noted the argument of the learned counsel appearing for the workman that in the face of his acquittal in the criminal case, the Corporation could not have imposed the penalty of removal from service. The learned Single Judge also noticed counter

argument of the learned counsel for the appellants that the workman was removed from service because he was found guilty of grave misconduct and then observed:

> "However, on a reading of the above, it is seen that several aspects have not been properly taken into account, especially in view of the fact that the petitioner was acquitted in a criminal case vide C.C.No.296 of 1991, on the file of the Judicial First Class Magistrate, Bobbili as per judgment dated 14.02.1995. Though it may not be binding or has a conclusive force, it should be taken as a whole as one of the relevant circumstances, with persuasive value. Further, it is also to be seen that normally in respect of such accidents, the respondent-Corporation is not taking any departmental action against the persons. On the face of it, the imposition of punishment of removal of the petitioner from service is unjust and has no nexus to the gravity of the offence as alleged. In the circumstances, it cannot be said that the respondent-Corporation is justified in imposing such punishment"

We have heard learned counsel for the parties and carefully examined the record. In our opinion, the order under challenge is legally unsustainable and the same is liable to be set aside because while nullifying the award of the Tribunal and the order of punishment passed by the disciplinary authority, the learned Single Judge completely overlooked the parameters laid down by the Supreme Court for exercise of jurisdiction by the High Court under Article 226 of the Constitution of India.

It is settled law that a writ of certiorari can be issued against an order passed by the Subordinate Court or Tribunal or a quasi-judicial authority if the same is without jurisdiction or is in excess of the jurisdiction or is violative of the rules of natural justice or is

vitiated by an error of law apparent on the face of the record. To put it differently, the High Court can issue a writ of certiorari if it is found that the order under challenge has been made by the Court or Tribunal or quasi-judicial which did not have the jurisdiction to pass such order or where such Court, Tribunal or Authority has failed to exercise the jurisdiction vested in it or where the action complained of has been taken in disregard of rules of natural justice. A writ of certiorari can also be issued if it is shown that while passing the order under challenge the Subordinate Court, Tribunal or quasi-judicial authority ignored legally admissible evidence or took into consideration inadmissible evidence or overlooked relevant material or the order is based on extraneous consideration/factors. However, a writ Court cannot sit in appeal over the orders of the Subordinate Court, Tribunal or quasi-judicial authority and interfere with the findings and conclusions recorded by such Court, Tribunal or Authority merely because on a re-appreciation of evidence different finding or conclusion is possible. The writ Court cannot go into sufficiency and adequacy of evidence which may have been relied by the Subordinate Court, Tribunal or quasi-judicial authority for reaching a particular finding or conclusion.

In **Syed Yakoob v. K.S. Radhakrishnan**[1] the Supreme Court considered the scope of the High Courts' power to issue a writ of certiorari and laid down the following propositions:

> i) A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for

instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.

ii) The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

iii) A finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court.

In **Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others**[2] their Lordships of the Supreme Court, while dealing with the scope of High Court's power under Article 226 to re-appreciate the evidence produced before the trial Judge, held

as under:

> "Where the evidence adduced before the trial Judge was not so immaculate that another Judge might not have taken a different view, it cannot be said that there was no evidence on which the trial Judge could have come to the conclusion he did. When the trial Court accepts the evidence, the High Court which is not hearing an appeal cannot be expected to take a different view in exercising jurisdiction under Articles 226 and 227."

In **Jitendra Singh Rathor v. Shri Baidyanath Ayurve Bhawan Ltd.**[3], the Supreme Court considered the question wheth in exercise of power under Article 227, the High Court can interfere wi the discretion exercised by the Tribunal under Section 11-A of the A and observed :

> "Under Section 11-A wide discretion has been vested in the Tribunal in the matter of awarding relief according to the circumstances of the case. The High Court under Article 227 of the Constitution does not enjoy such power though as a superior Court, it is vested with the right of superintendence. It is entitled to scrutinize the orders of the subordinate tribunals within the well-accepted limitations and, therefore, it can in an appropriate case quash the award of the Tribunal and thereupon remit the matter to it for fresh disposal in accordance with law and directions, if any. But it is not entitled to exercise the powers of the Tribunal and substitute an award in place of the one made by the Tribunal or substitute one finding for another and similarly one punishment for another, as in the case of an appeal where it lies to it."

In **R.S. Saini v. State of Punjab and others**[4] the Supreme Court upheld the order passed by the High Court dismissing the writ petition filed against the order of the petitioner's removal from the

office of the President of Municipal Committee. Some of the observations made in that decision, which are worth noticing read as under:

> "The court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

The proposition laid down in **Sayed Yakoob[1] (supra)** has been reiterated in a recent judgment in **Mohd. Shahnawaz Akhtar & Anr. v. Ist ADJ Varanasi & ors.**[5]

In **Surya Dev Rai v. Ram Chander Rai**[6]**,** the Supreme Court noted the history of the development of High Court's jurisdiction to issue writs, orders or directions under Articles 226 and 227 of the Constitution of India and laid down the following propositions:

> i) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred

thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

ii) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

iii) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

iv) The parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending

> proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where "a stitch in time would save nine". At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge.

In the light of the above, we shall now consider whether the reasons assigned by the learned Single Judge for setting aside the award of the Tribunal and the order of punishment are legally correct.

A reading of the order impugned in this appeal shows that the learned Single Judge nullified the award of the Tribunal without recording a finding that the approach adopted by the Tribunal in dealing with the issues raised by the workman was erroneous or that the view taken by it on the nature of punishment imposed by the employer was legally incorrect. The leaned Single Judge did not hold that the award passed by the Tribunal is vitiated by an error of law apparent on the face of the record and yet he set aside the award by making extremely vague and general observations like the following:

> " However, on a reading of the above, it is seen that several aspects have not been properly taken into account, especially in view of the fact that the petitioner was acquitted in a criminal case vide

C.C.No.296 of 1991, on the file of the Judicial First Class Magistrate, Bobbili as per judgment dated 14.02.1995. Though it may not be binding or has a conclusive force, it should be taken as a whole as one of the relevant circumstances, with persuasive value.

" Further, it is also to be seen that normally in respect of such accidents, the respondent-Corporation is not taking any departmental action against the persons. "

" On the face of it, the imposition of punishment of removal of the petitioner from service is unjust and has no nexus to the gravity of the offence as alleged. In the circumstances, it cannot be said that the respondent-Corporation is justified in imposing such punishment"

In our opinion, without recording a firm conclusion that the award passed by the Tribunal is vitiated due to violation of the rules of natural justice or an error of law apparent on the face of the record or that the finding recorded by enquiry officer is perverse or that the punishment imposed by the employer is shockingly disproportionate or wholly arbitrary, the learned Single Judge could not have upset an otherwise well-reasoned award passed by the Tribunal.

The observation of the learned Single Judge that the factum of the workman's acquittal in the criminal case by Judicial Magistrate First Class, Bobbili, though not binding, should have been taken into consideration is neither here nor there. While making that observation, the learned Single Judge overlooked the fact that the judgment of acquittal came into existence after more than three years of the conclusion of departmental enquiry and almost three years of imposition of punishment and, therefore, neither the enquiry officer nor the disciplinary authority had the occasion to advert to the findings recorded therein. That apart, Tribunal's appreciation of

evidence could not be declared as erroneous simply because it was at variance with the appreciation of prosecution evidence by Judicial Magistrate First Class, Bobbili.

The observations made by the learned Single Judge that normally in respect of such accidents, the respondent-Corporation is not taking any departmental action against the persons is not based on any tangible evidence. During the course of hearing, learned counsel for respondent No.1 could not draw our attention to any document or other evidence from which it can be inferred that the Corporation has, as a matter of policy, refrained from taking action against the drivers against whom allegation of rash and negligent driving is made. Therefore, this part of the observation made by the learned Single Judge will have to be treated as based on pure conjectures.

We shall now deal with the issue whether the workman's acquittal by Judicial Magistrate First Class, Bobbili vide his judgment dated 14.02.1995 should have been treated by the Tribunal as sufficient to nullify the order of punishment.

In a large number of cases, the Supreme Court has considered the question whether an employee, who is acquitted in a criminal case, can be subjected to disciplinary proceedings. In **R.P.Kapur v. Union of India**[7], a Constitution Bench held as under:

> "If the trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted, **even in case of acquittal, proceedings may follow, where the acquittal is other than honourable**" (emphasis supplied)

The same question was considered in **Corporation of the City of Nagpur, Civil Lines, Nagpur v. Ramchandra G.Modak**[8] and

answered in the following words:

> "The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental inquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. **Normally where the accused is acquitted honorably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence,** but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction (discretion) in any way fettered." (emphasis supplied)

In **Anil Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Limited, Haldia**[9], the Supreme Court held as under:

> "As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to

> departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal Court, the impugned order dismissing him from service deserves to be quashed and set aside."

In **Depot Manager,A.P. State Road Transport Corporation v. Mohd. Yousuf Miya**[10], the Supreme Court considered the question whether departmental enquiry on the charge of failure to anticipate accident and prevention thereof can be stayed only on the ground of pendency of criminal prosecution for the offence punishable under Section 304-A read with 338 I.P.C. and answered the same in negative by recording the following observations:

> "The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that

the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. In this case, the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under Sections 304-A and 338 IPC. Under these circumstances, the High Court was not right in staying the proceedings."

A somewhat similar view was expressed in **State of Rajasthan v. B.K. Meena**[11] and **Kendriya Vidyalaya Sangathan v. T.**

Srinivas[12]**.**

An apparently divergent opinion has been expressed in **Capt. M.Paul Anthony v. Bharat Gold Mines Ltd.**[13] and **G.M. Tank v. State of Gujarat**[14]**.** In first of these two cases, the Supreme Court considered whether the departmental proceedings and the proceedings in a criminal case launched on the basis of the same set of facts can be continued simultaneously and held as under:

> "The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand."

In the second case, the Supreme Court noted that the departmental proceedings and the criminal case are based on identical facts; that the appellant had been acquitted in the criminal case and held that the distinction which is usually drawn between the departmental

enquiry and the criminal case as to the burden of proof would not be applicable in such a case.

In our considered view, the reasons assigned by the Tribunal for refusing to set aside the punishment imposed by the disciplinary authority only on the ground of the workman's acquittal by Judicial Magistrate of First Class are in consonance with the consistent view expressed by the Supreme Court in **R.P. Kapoor v. Union of** India (supra), **Corporation of the City of Nagpur, Civil Lines, Nagpur v. Ramchandra G. Modak** (supra), **Anil Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Limited,** Haldia (supra), **Depot Manager, A.P. State Road Transport Corporation v. Mohd. Yousuf Miya** (supra), **State of Rajasthan v. B.K. Meena** (supra) and **Kendriya Vidyalaya Sangathan v. T. Srinivas** (supra). The judgments of **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.** (supra) and **G.M. Tank v. State of Gujarat** (supra) are clearly distinguishable because, in both the cases, the Supreme Court came to the conclusion that the foundational facts constituting the charge on which departmental enquiry was held and which were made subject matter of criminal prosecution were common and evidence produced in both the proceedings were identical. Their Lordships held that if the case set up by the prosecution was thrown out by the Court, the same set of evidence could not be relied for punishing the employee. The facts of the case in hand shows that the departmental enquiry initiated against the workman resulted in the passing of order of removal on 10.04.1992, whereas the criminal prosecution resulted in his acquittal on 14.02.1995 i.e. after almost three years of imposition of punishment. Thus, the enquiry officer and the disciplinary authority or, for that reason, even the appellate and review authorities did not have the occasion to consider the

impact of the judgment of acquittal rendered by the Judicial Magistrate First Class, Bobbili. On its part, the Tribunal took note of the findings recorded by the trial Judge and concluded that the same could not be made basis for nullifying the order of punishment, which was founded on a well-reasoned finding of guilty recorded by the enquiry officer. The Tribunal noted that the enquiry officer had objectively evaluated the evidence and concluded that the workman was guilty of rash and negligent driving, which resulted in accident and death of lady pedestrian. A careful reading of the award further shows that the Tribunal has given cogent reasons for not relying on the findings recorded by the Judicial Magistrate First Class, Bobbili. The Tribunal noted the variations in the evidence produced in two proceedings and concluded that the view expressed by the Judicial Magistrate on the issue of guilt of the workman was not sufficient to nullify the order of punishment. Therefore, the approach adopted by the Tribunal cannot be declared as vitiated by an error of law and the award passed by it cannot be upset only on the ground that after almost three years of imposition of punishment, the workman was acquitted in the criminal case. That apart, we find that while adjudicating the question relating to the quantum of punishment, the Tribunal had taken into consideration the fact that the disciplinary authority had imposed severe penalty because, on an earlier occasion, the workman had caused a similar major accident and had been punished. In our view, no exception can be taken to the consideration of similar act of misconduct committed by the workman on an earlier occasion.

The argument of Shri B. Gajender Reddy that the Tribunal should have nullified the order of punishment because, in the claim petition filed by the legal heirs of the deceased, the Corporation had

refuted the allegation of rash and negligent driving of the vehicle sounds attractive, but lacks merit and is liable to be rejected. It can reasonably be presumed that the Corporation had taken that stand in order to save itself from the liability of paying compensation. Therefore, the same cannot be made basis for exonerating respondent No.1 from the charge of rash and negligent driving and, thereby, causing death of the lady pedestrian.

On the basis of the above discussion, we hold that the approach adopted by the Presiding Officer of the Tribunal in dealing with the workman's challenge to the order of punishment did not suffer from any legal infirmity and he rightly approved the punishment imposed by the employer. As a corollary we hold that the learned Single Judge gravely erred by interfering with the award of the Tribunal and the order of punishment.

There is one more reason for setting aside the order passed by the learned Single Judge. While ordering reinstatement of the workman, the learned Single Judge also directed payment of full back wages without considering the issue of gainful employment of the workman during the intervening period of more than twelve years. In our view, a person who was holding the post of driver and was found guilty of rash and negligent driving could not have been given a lottery in the form of back wages. Even if the Tribunal had come to the conclusion that the punishment imposed on the workman is legally unsustainable, it could not have ordered payment of full back wages without going into the issue of gainful employment and without giving opportunity to the Corporation to adduce evidence to show that the workman had, in fact, been employed elsewhere.

In view of the above conclusion, we do not consider it necessary to deal with the judgments cited by the learned counsel for the appellants which have a bearing on the ambit and scope of the High Court's power of judicial review in the matters involving imposition of punishment on the delinquent employees.

For the reasons stated above, the appeal is allowed. The order of the learned Single Judge is set aside. Consequently, writ petition filed by the workman shall stand dismissed. However, the parties are left to bear their own costs.

G.S. SINGHVI, CJ

G.V. SEETHAPATHY, J

ksld /svs
16.06.2006

Note:
L.R. copy be marked.
(By order)
svs

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[1] AIR 1964 SC 477
[2] AIR 1970 SC 61
[3] (1984) 3 Supreme Court Cases 5
[4] JT 1999 (6) SC 507 = (1999) 8 SCC 90
[5] JT 2002 (8) SC 69 = (2002) 9 SCC 375
[6] AIR 2003 SC 3044
[7] AIR 1964 SC 787
[8] AIR 1984 SC 626
[9] JT 2005(8) SC 425
[10] AIR 1997 SC 2232
[11] (1996) 7 SCC 417
[12] (2004) 7 SCC 442
[13] JT 1999(2) SC 456

[14] (2006) 11 SC 36